PAUL KENDALL & FRANK MARTIN	:	BEFORE THE
Appellants	:	HOWARD COUNTY
vs.	:	BOARD OF APPEALS
HOWARD COUNTY PLANNING BOARD, HOWARD COUNTY DEPARTMENT OF PLANNING & ZONING, & MANGIONE FAMILY ENTERPRISES OF TURF VALLEY, LP	:	HEARING EXAMINER
	:	BA Case No. 646-D
Appellees		

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DECISION AND ORDER

On October 27, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, conducted a hearing on the administrative appeal of Paul Kendall and Frank Martin (the "Appellants") dated August 20, 2008.

I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Appellants certified that notice of the hearing was advertised and that the necessary property owners were notified as required by the Howard County Code.

The Appellants were not represented by counsel. Sang Oh, Esquire, represented Appellee Mangione Family Enterprises of Turf Valley, LP ("Appellee"). Paul Johnson, Deputy County Solicitor, represented the Howard County Department of Planning and Zoning. The Planning Board did not participate in the proceeding.

At the outset of the hearing, Appellee moved for dismissal of the case, arguing (1) Appellants were not parties to the Planning Board's decision concerning Site Development Plan ("SDP") SDP 07-062, and (2) the petition itself is defective for the reasons discussed below.

Upon consideration of Appellee's motion and the testimony and oral arguments presented, and for the reasons stated below, I have determined to grant the motion and dismiss the appeal.

Background

Mangione Family Enterprises of Turf Valley is the landowner and developer of Turf Valley, a multi-use development in western Howard County consisting of a hotel and conference center, condominiums, townhouses, single-family homes, and commercial development. The development of Turf Valley is controlled in part by the Planning Board-approved Turf Valley Multi-Use Subdistrict Final Development Plan ("FDP"), as amended. This FDP encompasses drawings depicting development areas and includes development criteria consistent with the underlying PGCC (Planned Golf Course Community) Zoning District.

In 2007 or 2008, Appellee apparently submitted an SDP for Oakmont at Turf Valley (SDP 07-062) to the Planning Board.[1] The Planning Board approved the SDP on July 31, 2008 and informed Appellee of its approval by a notice of decision letter dated August 4, 2008.[2] Messrs. Kendall and Martin were sent a copy of this letter as interested persons.

Appellants Paul Kendall and Frank Martin are residents of Turf Valley who claim they are aggrieved by certain rulings or actions as residents "at the center of the development," according to the petition.

Appellee's Motions

I.
Do Appellants Have the Statutory Right to Appeal SDP 07-062?

[1] According to the August 4, 2008, letter from Stephen Lafferty, Acting Executive Secretary, Howard County Planning Board to Louis Mangione, Mangione Family Enterprises, LP.

[2] Section 1.106.F of the Planning Board Rules of Procedure compels the Board, when exercising its administrative decision-making authority following a public hearing, to make a decision by issuing a letter on the Executive Secretary's signature. The Executive Secretary sends this notice of decision letter to the Petitioner, and, upon request, to other interested persons.

Howard County Code ("HCC") Section 16.900(j)(2)(iii) governs who may appeal a Planning Board decision. This section states in pertinent part:

> Any person specially aggrieved by any decision of the Planning Board *and* a party to the proceedings before it may, within thirty (30) days thereof, appeal said decision to the board of appeals in accordance with section 501 of the Howard County Charter.

(Emphasis added.)

Appellee contends in its memorandum of law attached to the motion to dismiss and at oral argument that the inclusion of the term "and" in HCC Section 16.900(j)(2)(iii) is conjunctive, requiring persons seeking to appeal a Planning Board decision to have been (1) a party to the relevant proceeding and (2) specially aggrieved by the applicable decision. Appellee therefore contends I have no jurisdiction to hear Appellants' petition with respect to SDP 07-062, the first of seven decisions appealed, as discussed below, because Messrs. Kendall and Martin were not parties to the Planning Board hearing on July 31, 2008, when the Board took action on SDP 07-062.

Appellants read HCC Section 16.900(j)(2)(iii) expansively, allowing any person aggrieved by a decision "as well as" a party to the proceedings to appeal such a decision. They ground this reading in part on the assertion that unlike a Planning Board "hearing," where a person can become a party, a person cannot become a "party" to a Planning Board "meeting." In their view, Appellee's interpretation has the impermissible consequence of denying due process to persons who attend anything but a Planning Board hearing.

Discussion

"And"--What's in a Word?

Conjunction Junction, What's Your Function?
Hooking Up Words and Phrases and Clauses.

The Electric Company, Schoolhouse Rock

The cardinal rule of statutory construction is to ascertain and carry out the real intention of the legislature. The primary source from which we glean this intention is the language itself. We first accord the words their ordinary and natural signification. We must also consider the context in which the provision appears and interpret it in the context of the entire statutory scheme. If the words of a provision are ambiguous, i.e., "reasonably capable of more than one meaning"–that is, their meaning is intrinsically unclear or their application to a particular object or circumstance is uncertain–then resort may be made to surrounding circumstances such as legislative history and prior case law. The effort is to discern the meaning and effect of the language in light of the objectives and purposes of the provision enacted. Such an interpretation must be reasonable and consonant with logic and common sense. *The Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 814 A.2d 469 (2003).

When it comes to HCC Section 16.900(j)(2)(iii), what is the ordinary and natural meaning of "and?" The term "and" is defined as "... [a] function word to indicate connection or addition especially of items within the same class or type; used to join sentence elements of the same grammatical rank or function." The term's legal definition echoes its ordinary meaning. "[A] conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first." BLACK'S LAW DICTIONARY 86 (6th Ed. 1990).

Appellants' further claim that the dual requirement is redundant misses its import. The specially aggrieved person standard is less restrictive than a specially aggrieved party is. The right to appeal being statutory,[3] the County Council has legislated that appeals of Planning Board decisions may be taken only by a restricted class of persons, those are both specially aggrieved persons and parties to the pertinent proceeding.

Hearings, Meetings, and Parties – Some Planning Board Rules of Procedure

Before arriving at a conclusion concerning whether I may take jurisdiction of Appellants' SDP 07-062 appeal, a word should be said relative to their assertion that they could not become parties to the pertinent Planning Board meeting. As this review of the Planning Board Rules of Procedure ("PBROP") demonstrates, Appellants wrongly claim that they could not be parties to the Board's July 31, 2008 public meeting on SDP 07-062.

The "meetings" and "hearings" to which Appellants refer in their response to Appellee's motion to dismiss are rooted in the Board's different functions.[4] Section 1.104 of the PBROP invests the Board with certain general functions in accordance with Howard County law and regulations, including acting (1) as a quasi-judicial decision-making authority following a required public hearing pursuant to Section 1.105, and (2) as an administrative decision-making authority following a public meeting pursuant to Section 1.106.[5] Among the matters the Board hears when functioning under its administrative decision-making authority are petitions for SDP

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[3] *See Howard County v. JJM*, 301 Md. 256, 482 A.2d 908 (1984) (citing *Maryland Bd. v. Armacost*, 286 Md. 353, 354-55 (1979); *Criminal Inj. Comp. Bd. v. Gould*, 273 Md. 486, 500 (1975); *Urbana Civic v. Urbana Mobile*, 260 Md. 458, 461 (1971)).

[4] HCC Section 16.900(j)(2)(i) instructs the Board to "make decisions with respect to matters submitted to it pursuant to the laws, rules, regulations, and ordinances of the county."

[5] The Rules of Procedure of the Howard County Planning Board are adopted pursuant to the authority of the Howard County Code, Title II "Administrative Procedures," Subtitle I "Administrative Procedure Act." The Administrative Procedures Act (APA) applies to the Planning Board's Procedures in addition to the Board's own Rules of Procedure

approval in a PGCC Zoning District, the Board having reserved that authority for itself when it approved the Comprehensive Sketch Plan.[6]

Overlaying these rules is PBROP Section 1.103.D.2, which grants party status to a person in a Board proceeding by:

> a. Providing the name, address and signature of the party and/or of the legal entity's duly authorized representative on a sign-up sheet provided by the Board.
> b. Testifying before the Board and providing it with the name and address of the party and/or legal entity; or
> c. In Quasi-Judicial Public Hearings, sending a letter to the Board, received before the close of the record in the case, indicating that the individual and/or legal entity is an interested party to the matter before the Board and providing the party's name, address and signature. Such letters may not be considered for any substantive content and will be received into evidence only for identification of parties to the case. In addition, petitions for or against a zoning matter shall not be used for purposes of conferring party status on those individuals signing the petition under this provision.

When read together, Sections 1.106 and 1.103.D.2 grant party status to persons who provide the necessary information on the sign-up sheet or provide information to the Board during a public meeting where the Board, functioning in its capacity as an administrative decision-maker, considers an SDP petition in a PGCC Zoning District.

The Board held a public meeting on July 31, 2008 to consider Appellee's Turf Valley Oakmont SDP petition. During that meeting, Appellants could have become parties by adding their names to the sign-up sheet or by providing information to the Board during the meeting. However, as Appellee pointed out at oral argument, Mr. Kendall and Mr. Martin produced no

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pursuant to Section 2.103 of the APA.

[6] Pursuant to Section 126 of the Howard County Zoning Ordinance, the Planning Board retains the administrative decision-making authority to approve certain land development plans in the PGCC district, including comprehensive sketch plans and SDP approval.

sign-up sheet with their signatures or any evidence that they had spoken, testified, or otherwise made an oral statement at that meeting.

Based on the above, I conclude the Appellants were not parties to the Planning Board proceeding of July 31, 2008, when it held a public meeting on SDP 07-062 and voted to approve the plan. I am therefore dismissing Messrs. Kendall and Martin's appeal with respect to SDP 07-062.

II.
Is the Notice of Appeal Adequate?

Appellee secondly alleges the omnibus nature and vagueness of the allegations and dates of decisions set forth in the petition render it defective for lack of adequate notice.

Appellants' response to the motion to dismiss did not specifically address the defective notice argument, focusing instead on Appellee's related claim that an appeal petition may only challenge a single ruling or action. To the extent possible, the "one petition, one appeal" issue is discussed separately in Part III of this decision and order.

Discussion

The due process clauses of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights protect an individual's interests in procedural due process. *See Roberts v. Total Health Care, Inc.*, 349 Md. 499, 709 A.2d 142 (1998) (discussing procedural due process). Due process within administrative proceedings requires the opportunity to be heard "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545 (1965). The opportunity to be heard in a meaningful manner includes the right to "notice, including an adequate formulation of the subjects and issues involved in the case." *Boehm v. Anne Arundel*

County, 54 Md. App. 497, 459 A.2d, 590 (1983) (quoting B. SCHWARTZ, ADMINISTRATIVE LAW, § 67 at 192-93). An important component "of the procedural due process right is the guarantee of an opportunity to be heard and its instrumental corollary, a promise of prior notice.[]" *Reese v. Dept. of Health*, 177 Md. App. 102, 934 A.2d 1009 (2007) (quoting L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 10-15, at 732 (2d ed. 1988)). An administrative proceeding petition has a twofold purpose: (1) to provide fair notice of the claim and grounds on which it rests, and (2) to give any opposing party adequate opportunity to prepare a defense. K. DAVIS, ADMINISTRATIVE LAW TREATISE, 2d Ed., Section 14:11 (1980); STEIN, MITCHELL, MEZINES, ADMINISTRATIVE LAW, Section 33.03[3] (1991).

Because administrative hearings are intended to be less formal than a full evidentiary hearing, the test of whether an administrative hearing petition provides adequate notice is not whether it meets technical formalities, but rather whether the notice accords filing requirements. Thus, technical irregularities in a petition will not result in the dismissal of an administrative appeal. "Mere irregularities in an application to a board for a permit not amounting to a jurisdictional defect do not affect the validity of the permit. A substantial compliance with the requirements of an administrative regulation in making an application for a permit is sufficient." *Beall v. Montgomery County Council*, 240 Md. 77, 89 (Md. 1965) (quoting *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 299, 49 A.2d 799 (1946)).[7]

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[7] In *Heath*, the Court of Appeals held that a grey sign posted on the premises instead of a white one, as required by the applicable notice provisions did not render the special exception permit application defective. In *Beall*, the applicant's failure to list all owners of property in a zoning application was not a jurisdictional defect because it did not impair the proceeding or affect the validity of a decision. Although not controlling, the Howard County Board of Appeals Hearing Examiner applied this "minor irregularities" test in BA Case No. 559-D to conclude Appellants' administrative appeal petition should not be dismissed as defective because Appellants failed to sign the affirmation contained on the appeal petition form and the petition was submitted only on their counsel's signature. Nor was the administrative appeal petition in BA Case No. 618-D defective because one of the Appellants who signed the petition was an "unknown individual." The identity of the other Appellants was easily discernable and their counsel

Even when a challenge to an administrative hearing petition alleges defective notice, absent a statute, ordinance, or rule requiring the petition's dismissal, the Maryland Courts have generally declined to dismiss such appeals as defective, where the record demonstrates the parties understood the subject and issues of the appeal. *Bd. of County Comm'rs for St. Mary's County v. Southern Res. Mgmt.*, 54 Md. App. 10, 837 A.2d 1059 (2003) (reversed and remanded on other grounds) is instructive.

In *Southern Res. Mgmt.,* the county zoning ordinance then in effect required an application for appeal to provide facts about the alleged error in the application of appeal. But when the County Commissioners petitioned the Board of Appeals for review of a Planning Commission decision to approve a residential subdivision plan, their notice of appeal broadly stated the basis of the appeal was "error in the order, requirement, decision or determination made by the Planning Commission," The Health Department's notice of appeal of the same decision stated: "Testimony for the applicant on February 28, 2000, described discovery of detonators with minimal net explosive weight. Subsequent inspection of public information files described in testimony on behalf of the applicant reveal that numerous types of ordnance with exponentially greater net explosive weight have been discovered in previous site investigations. Similar items have been recovered in the current investigation."

At the appeal hearing, the Board did not require the County Commissioners to limit the issues being appealed, and without addressing the adequacy of the notices of appeal, reversed the Planning Commission, concluding it erred in approving a phasing plan. The trial court on appeal reversed the Board, relying on *Norwood Heights Improvement Assn., Inc. v. Mayor and City*

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had signed the petition and was known to have spoken at the public hearing on their behalf.

Council of Baltimore, 195 Md. 1, 72 A.2d 1 (1950) *("Norwood Heights I")* to hold the notices of appeal to the Board of Appeals were deficient because they lacked statutory factual allegations and that the Board should have dismissed the appeal for lack of same.

The Court of Special Appeals reversed the trial court on its deficient notice holding. It initially pointed out the Court of Appeals had dismissed the *Norwood Heights* appeal not because the notice was deficient but because the party seeking the appeal at court was not authorized to appeal under the applicable statute. The trail court's error was its reliance on *Norwood Heights I* for the proposition that a party seeking to appeal the decision of the Planning Commission "must set out specifically the fact" alleged to violate a particular paragraph of the zoning ordinance. As the Court explained, *Norwood Heights I* was decided under a Baltimore City ordinance employing statutory language from Article 66B, Section 4.07(d)(1) of the Maryland Annotated Code, which was amended to exclude the requirement of factual allegation. *Southern Res. Mgmt.*, 54 Md. App. at 27-28.

Continuing its discussion of defective petitions and due process, the *Southern Res. Mgmt.* Court reasoned it did not have to determine whether the notices of appeals at issue were defective because the Board was not required to dismiss an appeal for defective notice. The record showed all the parties understood relatively early in the proceedings that there was only one significant issue, safety related to the historical presence of ordnance. Moreover, there was no argument that the Board excluded or permitted evidence based on inadequacy of the notices of appeal.

I take from *Southern Res. Mgmt.* the following. Absent a statute or regulation requiring a petition of appeal to be dismissed for inadequate notice, the Hearing Examiner has discretion to

hear the appeal where the parties can reasonably determine the ruling or action being appeal and the substantive issue.

Howard County being a charter county, the relevant statute in this appeal is Article 25A, § 5(U) of Maryland's Annotated Code, entitled "County Board of Appeals," which empowers charter counties "[t]o enact local laws providing (1) for the establishment of a county board of appeals . . . . and (4) [allows] for the decision by the board on petition by any interested person and *after notice and opportunity for hearing . . . ."* (emphasis added).

Pursuant to Article 25A § 5(U), HCC Section 501(c) authorizes the Board of Appeals (and the Hearing Examiner by dint of Section 502[8]) to adopt and amend rules of governing its proceedings, which shall have the force and effect of law when approved by legislative act of the Council to govern its proceedings. The Hearing Examiner and Board of Appeals have adopted such rules of procedure, which the County Council adopted by resolution. Of import to this appeal is Section 3.1 of the Hearing Examiner Rules of Procedure, which provides for petitions to be filed in the manner prescribed by Section 2.202(a) of the Board of Appeals Rules. Section 2.202(a) itself provides for the Board of Appeals to prescribe the form and content of the petition, for the petitioner to ensure the accuracy and completeness of the information required on the petition, and for DPZ to require corrections to the petition or additional information.

In this appeal, the pertinent petition is the Administrative Appeal Petition Form. Section 1 requires the appeal request to provide:

- A brief description of the ruling or action from which [the] immediate appeal is being taken

[8] By HCC Section 502, the Board may provide for a Hearing Examiner to conduct hearings within the Board's jurisdiction and vests the Council with the lone authority to "establish by legislative act the duties, powers, authority and jurisdiction of any examiner appointed under this section."

- The date of the ruling or action
- A brief description of the error of fact, or law, if any, presented by the appeal
- The manner is which the Appellant is aggrieved by the ruling or action
- Other factors which the Appellant wishes the Hearing Authority to consider

By the plain language of the above statutes and the administrative appeal petition form, and in light of the above discussion of procedural due process, a notice of appeal provides fair notice if the petitioner accurately and completely includes the necessary information or if the parties sufficiently understanding the issues in the ruling or action being appealed.

The liberalness of the notice provision in Article 25A, as reflected in the general informational provisions of the Board of Appeals-prescribed petition form, forecloses the interpretation urged by Appellee Mangione, i.e., that a defective notice of appeal rises to the level of a jurisdictional defect. Rules of Procedure should not be given the stature of a jurisdictional requirement, which may operate to defeat a petition. The Hearing Examiner's jurisdiction is the province of the County Council.[9]

In my opinion, the sole test is whether Appellants' notices of appeal meets procedural due process requirements. This determination can be characterized a variant of the "reasonable person rule" of common law, applied here to quasi-judicial, due process administrative proceedings. Would a reasonable person, or as here, reasonable parties, understand the issue in the ruling or action being appealed? If the parties are reasonably informed as to the matters to be taken up at the hearing, the petition should not be dismissed for defective notice.

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[9] Consistent with Article 25A's distinction between the Board's limited, procedural authority and the Council's broad jurisdiction-granting powers, HCC Section 501(f) confers upon the Board administrative rulemaking authority and vests the Council with the legislative authority to delimit the Board's jurisdiction.

The Appellants' Petition

Section 1 of the Appellants' notice of appeal petition, which has a stamped date of August 20, 2008, refers to Attachment A, which describes the rulings or actions from which the appeals are taken as:

1. Appeal of Approval of SDP 07-062
2. Any and all decisions regarding the Forest Conservation Plans and requirements
3. Decisions permitting the moving of dirt and calculation of amounts and locations of dirt and fill
4. Extensions for water and sewer for F 08-057
5. Any and all decisions regarding the rephrasing of the project done and July
6. Any and all decisions regarding the continued impact of the APFO exemption
7. Illegal segmentation of CSP, S-86-13, into multiple, independent submissions

The date of the ruling or action given is "various times beginning July 23, 2008 through August 2008." The alleged errors in fact or law include:

1. Planning Board failed to take into account its rules and regulations
2. Exceeded its authority
3. The SDP and F or FDP do not comport with the CSP [comprehensive sketch plan]
4. The SDP and F are changed
5. Process violates Zoning Ords.
6. Planning Board lacks authority

Also attached to the petition are four letters:

1. The August 4, 2008 notice of decision letter concerning the Boards approval of SDP 07-062
2. An August 5, 2008 letter from DPZ's Cindy Hamilton to Appellee correcting information in a July 9, 2008 letter concerning tentative housing unit allocations in relation to the County Council's approval of Resolutions 64-2008 and 65-2008
3. A July 22, 2008 letter from DPZ's Jeff Bronow to Appellee responding to Appellee's July 14, 2008 letter outlining the revised phasing plan for Turf Valley in accordance with Section 16.1104(b)(1) of the Howard County Subdivision Regulations (the "Subdivision Regulations"). The letter states the phasing plan is associated with the APFO-exempt residential units for Turf Valley and has been accepted.
4. A July 23, 2008 letter from DPZ's Cindy Hamilton to Appellee. The letter concerns Vantage Condominiums at Turf Valley Final Plan F-08-057 and grants an extension of the dates by which original water and sewer construction drawings must be submitted to the Division of Land Development ("DLD").

As an initial matter, I conclude the Appellants' petition sufficiently identifies the Department of Planning and Zoning as a party to the case, despite its omission of the department in the section describing the error presented by the appeal. Paul Johnson appeared on behalf of DPZ, all parties clearly understood DPZ was a party to the appeal, and there no objections to Paul Johnson's appearance.

Does Appellants' identification of the rulings or actions being appealed provide sufficient notice to all parties of the alleged errors of law or fact such that they have adequate opportunity to prepare a defense? In my opinion, the answer to this question is no.

- **Ruling or Action No. 1**

As to the first action on appeal, the Planning Board's decision to approve SDP 07-062, we need not reach the question of whether it provides fair notice. The issue is not properly before me, Appellants not having been parties to the relevant Planning Board hearing.

- **Rulings or Actions Nos. 2, 5, and 6**

The Appellants describe these three rulings or actions as "any and all decisions concerning" various matters. The dates of the alleged rulings or actions are "various times beginning July 23, 2008 through August 2008." These actions may or may not be related to some of the letters attached to the petition.

These catchall descriptions lacking any indication of the actual rulings or actions being appealed, it cannot be reasonably said that Appellees could nonetheless understand the issues on appeal. Given the impossibility of pinpointing the determinative issue or ruling, the necessary conclusion is that the appeals provide *no* notice.

- **Ruling or Action Nos. 3 and 4**

In my view, a reasonable person reading the broad, poorly drafted descriptions of these rulings or actions would be hard-pressed to understand the specific ruling or action being appeal and the alleged error of law or fact. There is a difference between an "inartful" description of a ruling or action, to use Appellant Kendall's term, and these ill-defined descriptions, which preclude Appellees from understanding the significant issues.

- **Ruling or Action No. 7**

By the description of this action, it appears Appellants are alleging an error in fact or law, not describing a ruling or action.

Reading the constitutional requirements of due process notice together with the administrative appeal petition form directive that the petitioner accurately and completely describe the error of fact or law presented by the appeal, I conclude the vague, allusive descriptions of the six rulings or actions (excluding Appeal No. 1) set forth in the Appellants' petition fail to provide fair notice of the alleged errors of law or fact. The Appellants unfairly expect the Appellees to take a Hegelian leap of faith that transforms quantity--multiple ill-defined rulings or actions alleged to have been taken from either the Planning Board or DPZ at some unknown date--into quality, functional descriptions that fairly notice the parties to the matters and being appealed and the issues, the alleged errors of law or fact. This metaphysical task being beyond the ken of most philosophers---and constitutional scholars---it is certain the same task stumps the reasonable person. I am therefore granting Appellee's motion to dismiss on this issue.

My decision on the fair notice issue speaks to the hazards of filing multiple appeals on a sole administrative appeal petition form. Appellants' decision to consolidate all their appeals within one petition has worked to their detriment. Their claim that financial considerations compelled them to "consolidate" all the appeals onto one form is unconvincing. Under Section 2.202(f) of the Board of Appeals Rules of Procedure, the Board must order the Director of Finance to refund all administrative hearing and filing fees to the Appellant if it reverses the decision of the administrative agency after an appeal hearing. Although the Appellants would have borne the upfront cost of filing the appeals on separate petition forms, they would have recouped their monies had the Board reversed the Planning Board or DPZ decisions. You pays your money and takes your choice.

III.
One Decision, One Petition?

> "In theory, there is no difference between theory and practice.
> But, in practice, there is."
>
> Yogi Berra

Appellee's correlate or alternative argument is that the purpose of the administrative appeal petition is to challenge a single rule or action and that failure to file a petition in this manner divests the Hearing Examiner of jurisdiction.[10]

Appellants claim there is no proscription against appealing multiple decisions on one petition form and that to require one appeal per one petition would amount to a denial of constitutional due process.

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[10] At oral argument, Appellee contended this conclusion is mandated by *Norwood Heights I* and its sister case, *Norwood Heights Imp. Ass'n v. Mayor & City Council of Baltimore*, 195 Md. 368, 73 A.2d 529 (1950) (citing *Norwood Heights* I in an appeal wherein the pertinent petition alleged a decision to issue permits violated twelve paragraphs of the Ordinance, which were set out numerically).

DPZ seeks guidance on this issue, stating at oral argument that DPZ staff is advised not to make determinations about the legal sufficiency of an administrative appeal petition when the Appellant files it.

Discussion

As discussed above, an administrative hearing body must dismiss a petition with defective notice where obliged by statute or regulation. Neither Article 25A, § 5(U) of Maryland's Annotated Code nor any Howard County statute or regulation divests the Hearing Examiner of jurisdiction when the notice of appeal is defective. Nor does the Board of Appeals administrative appeal petition form specifically require persons appealing multiple administrative rules or actions to use a separate petition form for each appeal.[11] So long as the parties understand early in the proceeding the ruling or action from which an appeal is taken in Howard County and the significant issues, the petition will comport with the requirements of administrative due process.

Due process considerations—and quasi-judicial minimalism—preclude a bright-line rule that persons may appeal only one administrative action on one administrative appeal form, if the consequence is that noncompliance with the rule divests the Hearing Examiner of jurisdiction to hear the appeal.[12] As explained above, only the Howard County Council may determine jurisdictional matters.

Nevertheless, while theoretically there is no reason why a single administrative appeal

[11] I note that the petition provides space only for the name of one Appellant. Rather than read into this section a rule that only one Appellant may appeal a ruling or action on one petition, it has become accepted practice to list additional appellants on an attachment to the petition.

[12] The universe of Hearing Examiner decisions involving multiple appeals on one petition is one. Additionally, my review of Hearing Examiner decisions produced only one appeal where the petition was dismissed for defective notice.

petition cannot notice appeals of multiple administrative actions on multiple dates, in practice there is. The reason why is also rooted in due process considerations.

The purpose of an administrative appeal petition form is to identify the administrative action being challenged and the alleged error of law or fact. Uniformity in administrative appeal petitions provides a manageable framework for administrative Hearing Examiner proceedings by ensuring consistency in administrative hearing proceedings. Where it standard practice for petitioners to appeal multiple administrative orders or decisions, Hearing Examiner proceedings would be bogged down with lengthy hearings and piecemeal dispositions of each appeal, due process requiring findings of facts and conclusions of law on each decision. The potentially oppressive and costly consequences of a "multiple appeals" policy is at odds with administrative due process.

In my opinion, these considerations provide fodder for the Board of Appeals—the sole authority for prescribing the form and content of a petition—to amend the administrative appeal petition form to directly instruct petitioners to file a separate administrative appeal petition for each action or ruling taken on appeal. This administrative amendment would crystallize the petition's primary function and, in my view, further procedural due process. *See e.g., Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) (discussing due process as flexible and calling for such procedural protections as the particular situation demands) (internal citations omitted).

ORDER

Based upon the foregoing, it is this **24th day of November 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Appeal of Paul Kendall and Frank Martin in BA Case No. 646-D is hereby **DISMISSED**.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

Michele L. LeFaivre

Date Mailed: 11/26/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.